

SHER TREMONTE LLP

November 11, 2018

**BY ECF**

The Honorable Lewis A. Kaplan  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

**Re:    *United States v. Dumitru***  
(18 Cr. 243 (LAK))

Dear Judge Kaplan:

We respectfully submit this letter in response to the Government's application to strike certain testimony given by Richard Tcaciuc on cross-examination concerning Mr. Tcaciuc's bail proceedings. Based on the Government's communication with a member of the Queens County District Attorney's Office, the Government states its belief that Mr. Tcaciuc's testimony may have been mistaken and requests that the Court strike the testimony and provide a curative instruction. Although the Government indicates it has requested a transcript of the bail hearing, it has not provided an affidavit or any other evidence that demonstrates Mr. Tcaciuc's answers were inaccurate.

The Court should decline to strike this testimony and should instead allow the Government to question Mr. Tcaciuc about this issue during its redirect examination. As Mr. Tcaciuc himself participated in the bail hearing, Mr. Tcaciuc's own testimony concerning his memory, observations, and understanding of the proceeding is the best evidence of what took place. To the extent Mr. Tcaciuc's testimony may be incorrect, the Government will have an opportunity to impeach him or attempt to elicit contrary testimony on redirect.

Respectfully submitted,

/s/ Justin M. Sher

Justin M. Sher  
Allegra Noonan

cc:    All counsel of record (by ECF)